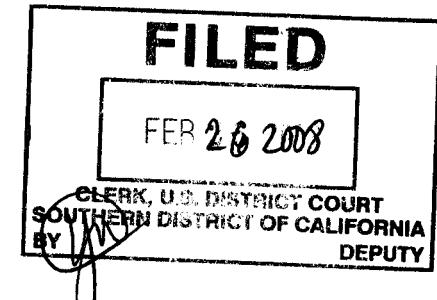


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12 UNITED STATES OF AMERICA



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14  
15  
16

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
UNITED STATES OF AMERICA, ) Magistrate Case No. 08MJ0386  
Plaintiff, )  
v. )  
EBER ABDIEL RESENDIZ, )  
Defendant. )  
\_\_\_\_\_  
STIPULATION OF FACT AND JOINT  
MOTION FOR RELEASE OF  
MATERIAL WITNESS(ES) AND  
ORDER THEREON  
(Pre-Indictment Fast-Track Program)

17 IT IS HEREBY STIPULATED AND AGREED between the plaintiff, UNITED STATES  
18 OF AMERICA, by and through its counsel, Karen P. Hewitt, United States Attorney, and  
19 Jeffrey D. Moore, Assistant United States Attorney, and defendant EBER ABDIEL RESENDIZ, by  
20 and through and with the advice and consent of Candis L. Mitchell, counsel for defendant, that:

21 1. Defendant agrees to execute this stipulation on or before the first preliminary hearing  
22 date and to participate in a full and complete inquiry by the Court into whether defendant knowingly,  
23 intelligently and voluntarily entered into it. Defendant agrees further to waive indictment and plead  
24 guilty to the pre-indictment information charging defendant with a non-mandatory minimum count  
25 of Transportation of Aliens and Aiding and Abetting, in violation of 8 U.S.C. §1324(a)(1)(A)(ii)  
26 and (v)(II).

27 //

28 JDM:es:2/12/08

1           2. Defendant acknowledges receipt of a plea agreement in this case and agrees to  
 2 provide the signed, original plea agreement to the Government not later than five business days  
 3 before the disposition date set by the Court.

4           3. Defendant agrees to plead guilty to the charge pursuant to the plea agreement on or  
 5 before **March 12, 2008**.

6           4. The material witnesses, Viviana Andrade-Adame, Cesar Manuel Andrade-Adame  
 7 and Juan Martinez-Morales, in this case:

8           a. Are aliens with no lawful right to enter or remain in the United States;  
 9           b. Entered or attempted to enter the United States illegally on or about  
 10 February 7, 2008;

11           c. Were found in a vehicle driven by defendant at the United States Border  
 12 Patrol Checkpoint near Jamul, California and that defendant knew or acted in reckless disregard of  
 13 the fact that they were aliens with no lawful right to enter or remain in the United States;

14           d. Were paying \$1,200 to others to be brought into the United States illegally  
 15 and/or transported illegally to their destination therein; and,

16           e. May be released and remanded immediately to the Department of Homeland  
 17 Security for return to their country of origin.

18           5. After the material witnesses are ordered released by the Court pursuant to this  
 19 stipulation and joint motion, if defendant does not plead guilty to the charge set forth above, for any  
 20 reason, or thereafter withdraws his guilty plea to that charge, defendant agrees that in any  
 21 proceeding, including, but not limited to, motion hearings, trial, sentencing, appeal or collateral  
 22 attack, that:

23           a. The stipulated facts set forth in paragraph 4 above shall be admitted as  
 24 substantive evidence;

25           b. The United States may elicit hearsay testimony from arresting agents  
 26 regarding any statements made by the material witness(es) provided in discovery, and such  
 27

1 testimony shall be admitted as substantive evidence under Fed. R. Evid. 804(b)(3) as statements  
2 against interest of (an) unavailable witness(es); and,

3 c. Understanding that under Crawford v. Washington, 124 S. Ct. 1354 (2004),  
4 “testimonial” hearsay statements are not admissible against a defendant unless defendant confronted  
5 and cross-examined the witness(es) who made the “testimonial” hearsay statements, defendant  
6 waives the right to confront and cross-examine the material witness(es) in this case.

7 6. By signing this stipulation and joint motion, defendant certifies that defendant has  
8 read it (or that it has been read to defendant in defendant's native language). Defendant certifies  
9 further that defendant has discussed the terms of this stipulation and joint motion with defense  
10 counsel and fully understands its meaning and effect.

11 Based on the foregoing, the parties jointly move the stipulation into evidence and for the  
12 immediate release and remand of the above-named material witness(es) to the Department of  
13 Homeland Security for return to their country of origin.

14 It is STIPULATED AND AGREED this date.

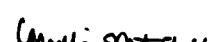
15 Respectfully submitted,

16  
17 Dated: 2/26/08

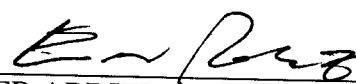
KAREN P. HEWITT  
United States Attorney

  
For   
JEFFREY D. MOORE  
Assistant United States Attorney

18  
19  
20  
21 Dated: 14 February 2008.

  
CANDIS L. MITCHELL  
Defense Counsel for Resendiz

22  
23  
24 Dated: 14 February 2008.

  
EBER ABDIEL RESENDIZ  
Defendant

## ORDER

Upon joint application and motion of the parties, and for good cause shown,

**THE STIPULATION** is admitted into evidence, and

**IT IS ORDERED** that the above-named material witness(es) be released and remanded forthwith to the Department of Homeland Security for return to their country of origin.

**SO ORDERED.**

Dated: 2/26/08

  
John H. Hays  
United States Magistrate Judge

United States Magistrate Judge